MT LEGISLATIVE HISTORY

Chapter 525 1979

Bill H _____ (S) 271 Original bill & hist. ✓ C

H. Committee on Judiciary

Hearing Date(s) Mar 13 ✓ C
Mar 16 ✓ C
_____ ___ C
_____ ___ C

Date Out Mar 16 ✓ C

S. Committee on Judiciary

Hearing Date(s) Feb 07 ✓ C
Feb 12 ✓ C
_____ ___ C
_____ ___ C

Date Out Feb 15 ✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

CHAPTER NO. 525

SENATE BILL NO. 271

INTRODUCED BY HAZELBAKER, TOWE

BY REQUEST OF THE BOARD OF CRIME CONTROL

IN THE SENATE

January 27, 1979	Introduced and referred to Committee on Judiciary.
February 8, 1979	Fiscal note requested.
February 13, 1979	Fiscal note returned.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent adopted.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed.
	On motion, rules suspended. Bill placed on calendar for third reading this day.
	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 20, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 24, 1979	Returned from second house. Concurred in as amended.
March 26, 1979	Second reading, pass consideration until March 28, 1979.
March 28, 1979	Second reading, amendments adopted.
March 29, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

BILL NO. 271

INTRODUCED BY [signature]

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE COLLECTION, STORAGE, AND DISSEMINATION OF CRIMINAL JUSTICE INFORMATION; TO PROVIDE FOR PRIVACY OF THE INFORMATION IN CERTAIN CIRCUMSTANCES AND PROCEDURES FOR REQUESTING CERTAIN INFORMATION; TO REQUIRE PHOTOGRAPHING AND FINGERPRINTING OF PERSONS UNDER CERTAIN CIRCUMSTANCES; AND TO REPEAL SECTIONS 44-2-103, 44-2-203, AND 44-2-204, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [This act] may be cited as the "Montana Criminal Justice Information Act of 1979".

Section 2. Purpose. The purpose of [this act] is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in criminal justice information recordkeeping.

Section 3. Definitions. As used in [this act], the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information

maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained

for purposes other than the administration of criminal justice.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any state or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) "Disposition" means information disclosing that criminal proceedings against an individual to determine guilt or innocence have terminated and describing the nature of the termination. It includes information disclosing that a charge or charges have been dismissed, that a law enforcement agency or a prosecutor has elected not to

charge, or that proceedings have been indefinitely postponed and the reason for the postponement. Particular dispositions include but are not limited to:

(a) conviction at trial or on a plea of guilty;

(b) acquittal;

(c) acquittal by reason of mental disease or defect;

(d) acquittal by reason of mental incompetence;

(e) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(f) deferred imposition of sentence with any conditions of deferral;

(g) nolle prosequi;

(h) nolo contendere plea;

(i) deferred prosecution or diversion;

(j) bond forfeiture;

(k) death;

(l) release as a result of a successful collateral attack;

(m) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(n) a finding of civil incompetence or mental illness;

(o) exercise of executive clemency;

(p) correctional placement on probation or parole or release; or

(q) revocation of probation or parole.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information, except confidential criminal justice information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping

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systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

Section 4. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by [this act] unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by [this act], which applies only when information may be disclosed consistent with such laws.

Section 5. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

Section 6. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for traffic, regulatory, or fish

and game offenses may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the official having custody of the person arrested. The criminal history record, if any, may be sent to the originating agency.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken:

(a) if a court so orders; or

(b) upon the request of the individual:

(i) if no charges were filed;

(ii) if a misdemeanor charge did not result in a conviction; or

(iii) if the individual was found innocent of the offense charged.

Section 7. Records -- form, contents, limits on use. A criminal justice agency originating initial offense

reports, initial arrest records, bail records, or daily jail occupancy rosters shall maintain a chronological or numerical record of these items in addition to any other records. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

Section 8. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

Section 9. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) a court having jurisdiction in a criminal case shall advise the appropriate criminal justice agency authorized in [section 6] and the state repository of the results of each formal proceeding in a criminal action prior to and including adjudication within 15 days of any final disposition of the case;

(3) criminal justice agencies authorized under [section 6] shall advise the state repository of all

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arrests, proceedings, and dispositions prior to and including results of adjudication within 30 days after final disposition of each criminal case;

(4) the department of institutions shall advise the state repository of all changes in custodial status subsequent to conviction within 30 days of such changes;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall promulgate rules to implement this section.

Section 10. Dissemination of public criminal justice information. (1) There are no restrictions on the

dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is required to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

Section 11. Dissemination of criminal history record information. Criminal history record information may not be disseminated to agencies other than criminal justice

agencies except with the consent or at the request of the individual about whom it relates according to procedures specified in [sections 19 and 20] or if considered necessary by a district court.

Section 12. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies or to those authorized by law to receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

Section 13. Development of statistical information — agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of

the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with [this act].

Section 14. Criminal justice information system security. Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

Section 15. Automated equipment security. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used

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if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

Section 16. Computer programming security. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each

terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

Section 17. Manual equipment security. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

Section 18. Personnel security. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently

employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal

regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

Section 19. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect or transfer to any other person any criminal history record information maintained about the individual upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with [this act].

(3) (a) An individual may request inspection or transfer, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request

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of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

Section 20. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If

accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

Section 21. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of

copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

Section 22. Sanctions. The sanctions provided in 44-2-205, apply to any knowing or purposeful violation of [this act].

Section 23. Department of justice -- powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of [this act];

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) inspect all criminal justice information, files, records, and systems of all criminal justice agencies to determine whether they are in compliance with the provisions of [this act]. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

Section 24. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of [this act].

Section 25. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the

effective date of this act.

Section 26. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Repealer. Sections 44-2-103, 44-2-203, and 44-2-204, MCA, are repealed.

-End-

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STATE OF MONTANA

Request No. 275-79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 6, 1979, there is hereby submitted a Fiscal Note for Senate Bill 271 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 271 is an act to regulate the collection, storage, and dissemination of criminal justice information; to provide for privacy of the information in certain circumstances and procedures for requesting certain information; to require photographing and fingerprinting of persons under certain circumstances; and to repeal section 44-2-103, and 44-2-203, and 44-2-2-4, MCA.

ASSUMPTIONS:

This fiscal note is based on the assumption that it will require one additional FTE within the Department of Justice to carry out the requirements of this act on a manual system. No provisions have been made for the automation of this system, the cost for which would be significant.

FISCAL IMPACT:

	FY 1980	FY 1981
Personal Services:		
Salaries	$15,814	$16,447
Employee Benefits	2,467	2,566
Total Personal Services	18,281	19,013
Operating Expenses		
Contracted Services	612	312
Supplies	360	360
Communications	1,080	780
Travel	6,768	6,768
Total Operating Expenses	8,820	8,220
Total Program Costs*	$27,101	$27,233

*Excludes any cost for the automation of the system which, if desired, would be significant.

The additional cost must be funded from the State General Fund.

LOCAL IMPACT:

The cost to local governments resulting from enactment of the proposed legislation was not determined. Depending on current system capabilities at each unit of local government, the cost will vary.

Carolyn Doering for

BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 2-13-79

FORTY-SIXTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY - SENATE

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB-256	1/25/79	2/7/79	2/16/79			2/15/79			
SB-260	1/26/79	2/6/79	2/9/79			2/7/79			
SB-261	1/26/79	2/3/79	2/9/79			2/7/79			
SB-271	1/29/79	2/7/79	2/15/79			2/12/79			
SB-274	1/24/79	2/3/79	2/5/79		2/5/79				
SB-277	1/29/79	2/7/79	Tabled 2/15/79		Re-rpt 5-5 2/12/79				
SB-278	1/29/79	2/5/79	2/9/79			2/7/79			
SB-281	1/29/79	2/6/79	2/10/79	2/12/79					
SB-282	1/29/79	2/9/79	2/12/79		2/12/79				
SB-283	1/29/79	2/10/79	2/19/79			2/18/79			
SB-284	1/29/79	2/10/79	2/16/79	2/15/79					
SB-286	2/9/79	2/17/79	2/17/79	2/17/79					
SB-288	1/30/79	2/8/79	2/9/79			2/8/79			
SB-293	1/30/79	2/8/79	2/9/79			2/8/79			
SB 295	1/30/79	2/9/79	2/12/79		2/12/79				
SB-296	1/30/79	2/8/79	2/8/79	2/7/79					

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 7, 1979

The twenty-eighth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 9:30 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 322:

This bill was sponsored by Senator Healy and is an act to protect employers from claims for contribution or indemnity asserted by a third person. Senator Healy offered a prepared statement. (See Exhibit A.)

Mr. William Kirkpatrick, representing the Champion International Corporation gave a statement in support of this bill. (See Exhibit B.) He said the purpose is not to change the Workmen's Compensation law, but to clarify it.

Norman Grosfield, representing the Division of Workers' Compensation gave a statement in support of the bill.

George Wood, Executive Secretary of the Montana Self-Insurance Association, requested a do pass on this bill.

There were no further proponents and no opponents.

There were no questions and the hearing on the bill was closed.

CONSIDERATION OF SENATE BILL 271:

Senator Hazelbaker gave an explanation of this bill, which is an act to regulate the collection, storage and dissemination of criminal justice information to provide for privacy of the information in certain circumstances etc. He stated that this bill was the result of a four-year study set up by the Board of Crime Control.

Sheri Sprigg, from the attorney general's office offered a number of amendments. (See Exhibit C.) She stated that there have been a number of problems that they have encountered in trying to fulfill the law presently on the books. She stated that Congress, in 1975, passed a law that required any states that receive federal money must come up with a plan for assuring the privacy and security of the system. She said that Montana's Constitution contains both the right-to-know and the right-to-privacy. She went through the major sections of the bill and discussed the amendments.

Larry Petersen, staff member from the Board of Crime Control gave a statement in support of this bill.

John Thomas, representing the Department of Institutions, stated that they had everybody they possibly could in the drafting of this bill; press association, newspaper, T.V. media, law enforcement people, general citizens; and that he would recommend it as one of the finest examples he has ever read and that this is being used in other states.

Mike Abley, Administrator of the Supreme Court, spoke in favor of the bill. He said that they are an agency that collects a great deal of information, that there is a lot of duplication going on and a lot of information that is not being collected. He stated that his major concern is with all these agencies getting information that the right to privacy is being violated. He says it is important to see that the proper people are getting the proper information.

Hal Stearnes, representing the Press Association, stated that they were involved in the drafting of this bill, and this bill clarifies what they have access to and what they are denied.

Phil Conover, representing the Department of Justice, stated that their agency is the most affected by this bill and gave an explanation of a rap sheet.

Doyle Saxby, deputy director for the Department of Administration, stated that last year, they could not agree with this bill; but now they feel they will be able to live with it and they support the bill.

Mike Meloy, representing the Lee Newspapers, stated that we don't appear as an opponent of the entire bill, but have trouble with one section. There is one fundamental difference that we disagree with and he stated that criminal justice information is not something that just crime justice estates has an interest in but the public has an interest in also. He stated that on page 6, there was a list of public criminal justice information. He also said he had a problem with the material on page 12, lines 3 through 6, and had some suggestions to take care of these matters.

Senator Lensink stated that the people here would be available to the Committee and anyone who wants to submit a written statement or who wishes to offer amendments is welcome to do so. The Committee will take the matter up next week and the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 277:

Senator Van Valkenburg gave an explanation of this bill, which is an act to provide for the appointment of limited guardians for incapacitated persons, etc.

Rosemary Zion, representing DD/MAP, Inc., stated that there is a need for some form of limited guardianship. She said there may be a frantic call from a doctor for a patient that needs surgery and they do not know what to do. She said there may be family and friends who would like to help the person but unable to assume

Date 2/7/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

Senate Bill No. 271, introduced copy is amended as follows:

1. Page 2, line 18.
Following: "(4)"
Insert: "(a)"

2. Page 3, line 2.
Following: "."
Insert: "(b) Criminal history record information does not include:
(i) records of traffic offenses maintained by the division of motor vehicles within the department of justice; or
(ii) court records."

3. Page 4, line 20.
Following: "(10)"
Insert: "(a)"

4. Page 4, lines 21 through 22.
Strike: "to determine guilt or innocence"

5. Page 4, line 23 through line 2 on page 5.
Following: "termination" on line 23
Strike: line 23 through "postponement." on line 2, page 5
Insert: " , or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed. (b)"

6. Page 5, line 4.
Following: line 3
Strike: "(a)"
Insert: "(i)"
Renumber: subsequent subsections accordingly

7. Page 6, line 1.
Following: "parole."
Insert: "(c) A single arrest of an individual may result in more than one disposition."

Exhibit C

8. Page 8, line 25.
Following: "for"
Insert: "a"
Strike: ","
Insert: offense other than driving while under the influence of alcohol or drugs, or a"

9. Page 9, line 1.
Strike: "offenses"
Insert: "offense"

10. Page 9, lines 10 through 12.
Following: "inform the" on line 10
Strike: line 10 through line 12 in its entirety
Insert: "originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record."

11. Page 10, line 3.
Following: "rosters"
Strike: "shall"
Insert: "may"

12. Page 10, lines 18 through 23.
Strike: subsection (2) in its entirety
Insert: "(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under [section 6] shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts;"

13. Page 10, lines 24 through 25.
Following: "(3)" on line 24
Strike: "criminal justice agencies authorized under [section 6]"
Insert: "an originating agency"

14. Page 10, line 25.
Following: "repository"
Insert: "within 30 days"

15. Page 11, line 1.
Strike: "arrests, proceedings, and"

16. Page 11, lines 1 through 3.
Following: "dispositions" on line 1
Strike: line 1 through line 3 in its entirety
Insert: "concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under [section 6];"

17. Page 11, line 5.
Following: "repository"
Insert: "within 30 days"
Following: "all"
Strike: "changes in custodial status"
Insert: "dispositions"

18. Page 11, line 6.
Following: "conviction"
Strike: "within 30 days of such changes;"
Insert: "of an individual who has been photographed and fingerprinted under [section 6];"

19. Page 11, line 22.
Following: "shall"
Strike: "promulgate"
Insert: "adopt"
Following: "rules"
Insert: "for criminal justice agencies other than those that are part of the judicial branch of government"

20. Page 11, line 23.
Following: "section."
Insert: "The department of justice may adopt rules for the same purpose for the judicial branch of government if the Montana Supreme Court consents to the rules."

21. Page 12, line 17.
Following: "is"
Strike: "required"
Insert: "authorized"

22. Page 12, line 24.
Following: "record information"
Insert: "that is not public criminal justice information"

23. Page 13, line 1.
Following: "agencies"
Strike: "except"
Insert: "unless:
(a) the information is disseminated"

24. Page 13, lines 3 through 4.
Following: "20]" on line 3
Strike: line 3 through line 4 in its entirety
Insert: ";
(b) a district court considers dissemination necessary;
(c) the information is disseminated in compliance with [section 13]; or
(d) the agency receiving the information is authorized by law to receive it."

25. Page 16, line 5.
Following: "data"
Strike: "imput"
Insert: "input"

26. Page 18, lines 4 through 5.
Strike: "or transfer to any other person"

27. Page 18, line 6.
Following: "individual"
Insert: "or transfer copies of that information to any other person"

28. Page 18, line 18.
Following: "of"
Insert: "copies of"

29. Page 18, line 23.
Following: "transfer"
Insert: "of copies of that information."

30. Page 21, line 14.
Following: "criminal"
Strike: "justice"
Insert: "history record"
Following: "information"
Strike: ","

23

Senate Bill No. 271, introduced copy, is amended as follows:

Page 21, lines 14 through 15.
Following: "(3)" on line 14
Strike: line 14 through "agencies" on line 15
Insert: " conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis

Please sign & return to Secretary [illegible]

SB 271 256 277 322 SENATE Judiciary COMMITTEE

BILL VISITORS' REGISTER DATE 1/21/

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OP
Jeannie Anderson				
Jim Anhorn	DD Council	277	✓	
Margaret Ulvestad	DD/MT. Advocacy Prog.	277	✓	
Kathleen Ellis	Legal Assistance for Older Americans	277	✓	
Norm Grosfield	Division of Workers' Comp	322	✓	
Jim Murphy	✓ ✓ ✓	✓	✓	
Ed Eaton	OBPD	271	✓	
John Bell	self	277		✓
Mike Thompson	[illegible]	277		✓
Hal Stearns	Press assoc	271		
John G. Thomas	BCC	271	✓	
Phillip H. Cannon	Dept. of Justice	271	✓	
Laurence Petersen	Board of Crime Control	271	✓	
[illegible]	[illegible]	271	✓	
Jorge Wall	Montana Legal Services Assn.	322	✓	
[illegible]	Champion Intl	322	✓	
Joey Lillemon	DD Council	277	✓	
Ruth Nelson	Lee Newspapers	271		
Rosemary Ryan	DDI MHD	277	→	
[illegible]	[illegible]		✓	
[illegible]	[illegible]			
Ann Bloodgood	Legislative Council	256		
John Bell	Clerks & Recorders	S. 256	✓	
PAUL RICHARDS	MONTANA CRIME CONTROL	256		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY with attend

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 12, 1979

The thirty-fifth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 4:40 p.m.

ROLL CALL:

All members were present with the exception of Jack Healy.

DISPOSITION OF SENATE BILL 271:

Senator Towe moved that the committee adopt amendments #1 and 2 of those offered. (See Exhibit A.). The motion carried unanimously.

Senator Towe moved tht the committee adopt amendment #5 and also #3, 4, 5, and 6. The motion carried unanimously.

Senator Towe moved the adoption of amendment #7. The motion carried unanimously.

Senator Towe moved that amendment #8 be not adopted. The motion carried.

Senator Towe moved that amendments #9 through 15 be adopted. The motioin carried unanimously.

Senator Towe moved that the committee adopt amendments #16 and 17. The motion carried unanimously.

Senator Towe moved the adoption of amendments #18 and 19. The motion carried.

Senator Towe moved the adoption of amendment #20. The motion carried.

Senator Towe moved that we adopt amendment 12 through 20. The motion carried.

Senator Towe moved that amendment #11 be adopted. The motion carried.

Senator Towe moved that the committee adopt amendment #21. The motion carried unanimously.

Senator Towe moved the adoption of amendments #22, 23, and 24. The motion carried unanimously.

Senator Towe moved the adoption of amendments #25 through 29. The motion carried unanimously.

The committee decided not to accept amendment #30.

Senator Brown moved that the bill be amended on page 21, lines 14 and 15, following "(3)" by striking remainder of line 14 and through "agencies" on line 15 and inserting "conduct audits of the

criminal history record information systems of a representative sample of a state and local criminal justice agencies chosen annually on a random basis." The motion carried unanimously.

Senator Towe stated that he thought that this should be given an individual because after twenty years or so, he has the opportunity to wipe that slate clean and that he gets faced with it every time he turns around.

Senator Turnage commented that they lock everything into those computers - that we were relatively safe before the age of the computer as they couldn't find records. There was further discussion on other areas of this bill.

Senator Towe moved that the bill do pass, as amended. The motion carried. See Roll Call Vote.

DISPOSITION OF SENATE BILL 214:

There was some discussion on labor agreements and disputes.

Senator Turnage stated that if they arbitrate they take management's position away. Senator Roskie statedthat this act does not subject anyone to do anything unlawfully or unconstitutionally. There was further discussion on the bill. Senator Lensink asked for a motion on the bill. Senator O'Hara wondered about putting in something on the last best offer.

There being no agreement or motions on the bill, the meeting was adjourned at 5:47 p.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 2/12/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		✓
Healy, John E. (Jack) (D)			✓

Each Day Attach to Minutes.

SENATE

Senate Bill No. 271, introduced copy is amended as follows:

1. Page 2, line 18.
Following: "(4)"
Insert: "(a)"

carried 2. Page 3, line 2.
Following: "."
Insert: "(b) Criminal history record information does not include:
(i) records of traffic offenses maintained by the division of motor vehicles within the department of justice; or
(ii) court records."

3. Page 4, line 20.
Following: "(10)"
Insert: "(a)"

4. Page 4, lines 21 through 22.
Strike: "to determine guilt or innocence"

5. Page 4, line 23 through line 2 on page 5.
Following: "termination" on line 23
Strike: line 23 through "postponement." on line 2, page 5
Insert: " , or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed. (b)"

carried

6. Page 5, line 4.
Following: line 3
Strike: "(a)"
Insert: "(i)"
Renumber: subsequent subsections accordingly

carried 7. Page 6, line 1.
Following: "parole."
Insert: "(c) A single arrest of an individual may result in more than one disposition."

Exhibit A

1-35
29

8. Page 8, line 25.
Following: "for"
Insert: "a"
Strike: ","
Insert: offense other than driving while under the influence of alcohol or drugs, or a"

9. Page 9, line 1.
Strike: "offenses"
Insert: "offense"

10. Page 9, lines 10 through 12.
Following: "inform the" on line 10
Strike: line 10 through line 12 in its entirety
Insert: "originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record."

11. Page 10, line 2.
Following: "rosters"
Strike: "shall"
Insert: "may"

12. Page 10, lines 18 through 23.
Strike: subsection (2) in its entirety
Insert: "(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under [section 6] shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts;"

13. Page 10, lines 24 through 25.
Following: "(3)" on line 24
Strike: "criminal justice agencies authorized under [section 6]"
Insert: "an originating agency"

14. Page 10, line 25.
Following: "repository"
Insert: "within 30 days"

15. Page 11, line 1.
Strike: "arrests, proceedings, and"

16. Page 11, lines 1 through 3.
Following: "dispositions" on line 1
Strike: line 1 through line 3 in its entirety
Insert: "concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under [section 6];"

17. Page 11, line 5.
Following: "repository"
Insert: "within 30 days"
Following: "all"
Strike: "changes in custodial status"
Insert: "dispositions"

18. Page 11, line 6.
Following: "conviction"
Strike: "within 30 days of such changes;"
Insert: "of an individual who has been photographed and fingerprinted under [section 6];"

19. Page 11, line 22.
Following: "shall"
Strike: "promulgate"
Insert: "adopt"
Following: "rules"
Insert: "for criminal justice agencies other than those that are part of the judicial branch of government"

20. Page 11, line 23.
Following: "section."
Insert: "The department of justice may adopt rules for the same purpose for the judicial branch of government if the Montana Supreme Court consents to the rules."

21. Page 12, line 17.
Following: "is"
Strike: "required"
Insert: "authorized"

22. Page 12, line 24.
Following: "record information"
Insert: "that is not public criminal justice information"

23. Page 13, line 1.
Following: "agencies"
Strike: "except"
Insert: "unless:
(a) the information is disseminated"

24. Page 13, lines 3 through 4.
Following: "20]" on line 3
Strike: line 3 through line 4 in its entirety
Insert: ";
(b) a district court considers dissemination necessary;
(c) the information is disseminated in compliance with [section 13]; or
(d) the agency receiving the information is authorized by law to receive it."

25. Page 16, line 5.
Following: "data"
Strike: "imput"
Insert: "input"

26. Page 18, lines 4 through 5.
Strike: "or transfer to any other person"

27. Page 18, line 6.
Following: "individual"
Insert: "or transfer copies of that information to any other person"

28. Page 18, line 18.
Following: "of"
Insert: "copies of"

29. Page 18, line 23.
Following: "transfer"
Insert: "of copies of that information."

no 30. Page 21, line 14.
Following: "criminal"
Strike: "justice"
Insert: "history record"
Following: "information"
Strike: ","

3

Senate Bill No. 271, introduced copy, is amended as follows:

adopted

Page 21, lines 14 through 15.
Following: "(3)" on line 14
Strike: line 14 through "agencies" on line 15
Insert: " conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis

SENATE COMMITTEE JUDICIARY

Date _____ Bill No. 211 Time 5:30

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)		✓
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)		✓
Galt, Jack E. (R)		✓
Towe, Thomas E. (D)	✓	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	

Secretary _____ Chairman _____

Motion: Do pass, as amended

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 15, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 271

Respectfully report as follows: That Senate Bill No. 271,
introduced bill, be amended as follows:

1. Page 2, line 18.
Following: "(4)"
Insert: "(a)"

2. Page 3.
Following: line 2
Insert: "(b) Criminal history record information does not include:
(i) records of traffic offenses maintained by the division of motor vehicles, department of justice; or
(ii) court records."

3. Page 4, line 20.
Following: "(10)"
Insert: "(a)"

4. Page 4, lines 21 and 22.
Strike: "to determine guilt or innocence"

DO PASS.

(continued)

STATE PUB. CO.
Helena, Mont.

Chairman

43

3525

5. Page 4, line 23 through line 2 on page 5.
Following: "termination" on line 23
Strike: remainder of line 23 through "postponement." on line 2, page 5
Insert: "or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.
(b)"

6. Page 5, line 4.
Following: line 3
Strike: "(a)"
Insert: "(i)"
Renumber: subsequent subsections accordingly

7. Page 6.
Following: line 1
Insert: "(c) A single arrest of an individual may result in more than one disposition."

8. Page 8, line 25.
Following: "for"
Insert: "a"

9. Page 9, line 1.
Following: "game"
Strike: "offenses"
Insert: "offense"

10. Page 9, lines 10 through 12.
Following: "inform the" on line 10
Strike: remainder of line 10 through line 12 in its entirety
Insert: "originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record."

11. Page 10, line 2.
Following: "rosters"
Strike: "shall"
Insert: "may"

12. Page 10, lines 18 through 23.
Following: line 17
Strike: subsection (2) in its entirety
Insert: "(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under [section 6] shall

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts;"

13. Page 10, lines 24 and 25.
Following: "(3)" on line 24
Strike: "criminal justice agencies authorized under [section 6]"
Insert: "an originating agency"

14. Page 10, line 25.
Following: "repository"
Insert: "within 30 days"

15. Page 11, line 1.
Strike: "arrests, proceedings, and"

16. Page 11, lines 1 through 3.
Following: "dispositions" on line 1
Strike: remainder of line 1 through line 3 in its entirety
Insert: "concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under [section 6];"

17. Page 11, line 5.
Following: "repository"
Insert: "within 30 days"
Following: "all"
Strike: "changes in custodial status"
Insert: "dispositions"

18. Page 11, line 6.
Following: "conviction"
Strike: "within 30 days of such changes"
Insert: "of an individual who has been photographed and fingerprinted under [section 6]"

19. Page 11, line 22.
Following: "shall"
Strike: "promulgate"
Insert: "adopt"
Following: "rules"
Insert: "for criminal justice agencies other than those that are part of the judicial branch of government"

20. Page 11, line 23.
Following: "section."
Insert: "The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules."

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

21. Page 12, line 17.
Following: "is"
Strike: "required"
Insert: "authorized"

22. Page 12, line 24.
Following: "record information"
Insert: "that is not public criminal justice information"

23. Page 13, line 1.
Following: "agencies"
Strike: "except"
Insert: "unless:
(a) the information is disseminated"

24. Page 13, lines 3 and 4.
Following: "20]" on line 3
Strike: remainder of line 3 through line 4 in its entirety
Insert: ";
(b) a district court considers dissemination necessary;
(c) the information is disseminated in compliance with [section 13]; or
(d) the agency receiving the information is authorized by law to receive it."

25. Page 16, line 5.
Following: "data"
Strike: "imput"
Insert: "input"

26. Page 18, lines 4 and 5.
Strike: "or transfer to any other person"

27. Page 18, line 6.
Following: "individual"
Insert: "or transfer copies of that information to any other person"

28. Page 18, line 13.
Following: "of"
Insert: "copies of"

29. Page 18, line 23.
Following: "transfer"
Insert: "of copies"

30. Page 21, lines 14 and 15.
Following: "(3)" on line 14
Strike: remainder of line 14 through "agencies" on line 15
Insert: "conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis"

EVERETT R. LENSINK, Chairman.

STATE PUB. CO.
Helena, Mont.

STATEMENT OF INTENT RE: SENATE BILL NO. 271

This bill delegates authority to the department of justice to adopt rules in sections 9 and 23.

Section 9(7) requires the department of justice to adopt rules to implement that section, entitled "Procedures To Ensure Accuracy Of Criminal History Records." The section provides that the department of justice is required to maintain a centralized state repository of criminal history record information; that criminal justice agencies are required to report dispositions of criminal cases to that state repository; that, where time allows, criminal justice agencies are required to check their records against the state repository's to assure their completeness before disseminating them; and that criminal justice agencies are responsible for the completeness and accuracy of their own files. The intent of the legislature in granting rulemaking authority with respect to this provision is to require the state repository to establish uniform procedures for the reporting of dispositions to it. These rules should include clear-cut directives regarding the format and nature of the information to be reported. For example, the rules could require the uses of standard forms for reporting. Or, these rules could provide for a unique tracking number to facilitate

the linking of dispositions to specific arrests.

Section 23(1) allows, but does not require, the department of justice to adopt rules necessary to carry out the purposes of the act. With the exception of section 9, discussed above, the legislature intends that this act be self-implementing. This grant of discretionery rulemaking authority is limited, therefore, to the adoption of: (1) rules establishing procedures and forms necessary for the efficient operation of a state repository of criminal history record information, (2) interpretive rules necessary to avoid constructions that would defeat the purposes of the act, listed in section 2, or (3) model procedural guidelines which other criminal justice agencies may or may not adopt for their own use.

First adopted by the Senate Judiciary Committee on February 19, 1979.

- End -

__ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Ou
SB 54	allow use of restraining orders in enforcement of unfair trade practices	2/27	Towe	Monday /12	be concurred	3/16
SB 221	establish administrative code procedures for support for dependent children	2/27	Turnage	Monday /12	as amended be concurred	3/23
SB 228	persistent felony offenders ineligible for parole, etc.	2/27	Goodover	Tues. /13	not concurred	3/15
SB 243	revise procedure for preliminary injunctions and restraining orders, etc.	2/27	Towe	Tues. /13	be concurred	3/16
SB 271	criminal justice information privacy etc.	2/27	Hazelbaker	Tues. /13	as amended be concurred	3/17
SB 283	products liability - statute of limitations, etc.	2/27	Lowe	Monday /13	as amended not concurred	3/16

JUDICIARY COMMITTEE
HOUSE OF REPRESENTATIVES
March 13, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman Scully at 8 a.m. in room 436 of the Capitol Building. All members were present. Scheduled for hearing were Senate Bills 228, 286, 243, 495, 386, 476, and 271.

SENATE BILL NO. 243: Senator Towe. This bill clears up a very confused area, injunctions, restraining orders, and provides that temporary restraining orders will expire within 10 days unless renewed. On page 1 you will note that the complaint is stricken out. It has always been necessary to file a complaint. We are taking that out, and you may file a separate action. It would probably be the injunction.

On line 23, strike the word, plaintiff and put in advocate. On page 3, no preliminary injunction may be issued without notice to the adverse party. It It will parallel the federal procedure. Section 3 covers what I just stated. The injunction must be granted or oral testimony. Section 305 is a temporary restraining order. It was simply a restraining order. In order to get it you go through the form as set forth in section 6. In section 7 if you want a temporary restraining order without notice you must show that it would cause immediate and irreparable injury.

Section 9, page 6 covers the restraining order without notice. It will expire within 10 days. On the top of page 7, it could be extended for an additional 10 days. It must be set for the earliest possible time.

MIKE McGRATH: This bill was introduced at our request. There have been a number of instances where in our experience state agencies have been enjoined without a hearing and without an exparte order. There has long been confusion in the state of Montana and a preliminary injunction and a temporary restraining order that is consistent with our law and with the due proc has been needed. This bill is consistent with rule 65 and we urge a do pass.

SENATOR TOWE: It would help the state when they get hit with an injunction without notice. He elaborated further.

There was no discussion and no questions and the hearing closed on Senate Bill No. 243.

SENATE BILL NO. 286: Senator S. Brown. This bill would increase the number of associate justices on the supr court. This bill was amended on the floor of the Senate to provide that two new justices would be elected.

J. C. WEINGARTNER: A lot of times the delays are caused by the lawyers themselves because they are trying to do discovery work.

Representative Keyser asked what would you do about a judge that does not work or is one whiz of a judge. Mr. Blaylock answered that you could go before the judicial standards and ask for his removal. Discussion about how to remove a judge.

Mr. ABLEY: It is almost impossible because they are elected and answer to the people. You could go to the judicial standards.

No further discussion and the hearing closed on Senate Bill No. 386.

SENATE BILL NO. 271: Senator Hazelbaker. This bill delegates authority to the Department of Justice to adopt rules. He had to go to another meeting so introduced Senator Towe who would explain the bill.

SENATOR TOWE: We have been working on this bill for something like four years. It is a very different and complex measure. This deals with criminal justice information records. There are certain regulations you must follow. The regulations are aimed primarily at accuracy. He went on to explain further.

SHERRY SPRAGUE: I was on the committee from the Attorney Generals office.

LARRY PETERSON: Bureau of Research and Crime Control. We did the work on the bill. We worked on it about four years. It will be a real asset to the system in Montana.

DOYLE SAXBE: Department of Administration. We have the central computer and it will have some impact because of the criminal justice network. It will force us to be a little more careful of our people who have access to the data.

MIKE MELDAHL: We think that this bill does address some of the problems that we hve today.

SHERRY SPRAGUE: I do want to explain why the Attorney General is interested in this bill. In the Department of Justice we have a bureau that was set up 15 years ago. This bureau has had a lot of trouble fulfilling its mandate

because local agenices are confused about what information to give to the bureau. Congress is on our back, and she explained why. And third, the right of privacy and the right to know and this is the major problem in all areas. This bill would clarify that for government agencies and would better protect people in the system. I also think it would protect news agencies. What the bill does, there are five major aspects.

1. require completeness (section 6)
2. accuracy of information (section 9)
3. area of dissemination of the information which allows conviction information to be released to the public. It does not allow release of information that would not result in conviction.
4. it requires certain precautions
5. section 19 and 20 inspection and review. This does not include intelligence records. It allows an individual to go and see their own record and if there is a mistake to correct it

There has been some confusion about this bill in the area of automated systems.

BRUCE McGINNIS: Department of Revenue. We have some amendments to assist the department in functions and to take care of some problems in its present form. He talked about their mandate if someone holds a liquor license, and also about the child support parent locater service. I should point out to the committee that the Department is not totally in favor of the parts of this bill about access to records and for accurate and complete data availability. All that we are asking for in our amendment is that we be allowed to continue as we are now.

MIKE MELOY: Lee Newspapers. It is a very confusing bill to read. That might be because of the way it was put together by the committee. I was concerned about page 10 at the bottom. Section 7 concerns itself with records. The amendments seem to be inconsistent. I suggest that you might want to amend section 7 to conform.

SENATOR TOWE: My initial response is, we have been studying this for five years, why do you just now come forward. And also there might be some flack if the Department of Revenue should be declared a criminal Justice agency. He went through the amendments and discussed them. I don't like seciton 8 but I am willing to go with it because this is a compromise measure. In section 7 we are referring to the police blotter. He gave the exceptions that were made.

Representative Eudaily asked about the cost if we were to go to automation as given on the fiscal note. Discussion about this.

Senator Towe commented that the state is mostly automated at the present time so this would relate to the others.

MIKE MELDAHL: The Department of Justice says they will handle it through a mandate process. It was noted there would be no automatation in this bill.

Representative Kemmis asked, can you explain why there is not a conflict between 6 and 7 on page 10. Mr. Towe explained you should look at the definition of public criminal justice information. He talked about the public records and no other records which would have a rap sheet which would not be public. Mr. Kemmis asked if all of these records are public records then, and Mr. Towe said, we wanted to preclude them from taking other records.

Representative Curtiss asked about page 6, lines 16 and 17. Mr. Towe explained that the disposition is a very technical reference for this and there may be many other dispositions.

There was no other discussion and the hearing closed on Senate Bill 271.

SENATE BILL NO. 228: Senator Goodover. This bill is relating to persistent felon offenders eligibility for parole or participation in the prisoner furlough program. He gave the new language on page 2, line 12, and page 3, lines 6 through 9. This bill will add a little more incentive for people to obey the law.

GLEN BRADLEY: Former head Highway Patrol. I am sort of trying to pinch-hit for Judge Nelson. I have some notes from Judge Nelson. He talked about the persistent felony offender. I would like to recommend that this include that the judge would have no discretion. The offender would have to serve the imposed sentence with only good time.

SENATOR GOODOVER: He read several letters in support of the measure.

There was some general discussion and the hearing closed on Senate Bill 228.

SENATE BILL NO. 476: Senator Van Valkenburg. There are some definitions on page 3. Page 10 prohibits certain practices, and page 11 is certain requirements, line 18 is the statement and page 12, line 3 is the criminal penalty. The bill is intended to cover lie detectors and the operators and provide for some kind of supervising of them.

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 16, 1979

The Judiciary Committee was called to order by Chairman Scully at 8:00 a.m in room 436 of the Capitol Buildin. All members were present except Representatives Conroy and Seifert.

SENATE BILL [illegible]. 21[illegible] Representative Keedy presented prepared amendments to the committee. He explained the amendments and the drafting of them. It would retain the exclusionary rule. The exclusionary rule, which requires the exclusic of otherwise admissible evidence, has consistently permitted the guilty to escape prosecution and punishment because the police have committed errors which in many cases have been technical in nature and in most cases have been made in good faith. Actual police lawlessness has seldom been deterred by the rule in cases where prosecuti have resulted since the exclusion of the evidence at trial carries no personal sanction against the police officer involved. Such police lawlessness has seldom been deterred by the rule where the police have had goals other than the prosecution of criminals since such activity is subject to virtually no judicial scrutiny and the rule provides no remedy for the innocent victims of such lawlessness. Application of the rule often deflects the truthfinding process and often frees the guilty. The disparity in cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice. Although the rule is thought to deter unlawful police activity because of the respect for the fourth amendment, it may well have the opposite effect of generati disrespect for the law and administration of justice. He went on to explain the bill as his amendments would affect it and what they would do.

Representative Scully questioned subsection 4, concerning civil liability and proof by a preponderance of evidence that there was a violation of the rights c a person protected by the fourth amendment. Some discussion followed.

Then followed discussion about the warrant and the civil damages, and further discussi about civil liability. Representative Kemmis asked about the provisio of violation. Would they be weighed one against the other.

Larry Weinberg, staff attorney, explained the new section three as used in this bill. He explained the exclusive remedy and the laws of Montana relating to search and seizure.

After much further discussion Representati Keedy moved the amendments. He stated th on page 5, it would be necessary to strike the new section in the big sheet presented to the committee and adopt the new section 11 of the

SENATE BILL NO. 271: Representative Keyser moved the amendments as presented. The motion carried with Representative Holmes and Uhde voting "no". Representative Eudaily moved to amend page 10, line 22. General discussion followed. The comment was made that this does not prevent other records from being kept which do contain prior criminal record information. Discussion about this. Representative Eudaily moved to strike "in addition to any other records". The motion carried with the vote unanimous. Representative Keyser moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Uhde will carry on the floor.

SENATE BILL NO. 301: Representative Curtiss moved the amendments. It was found that all of the members did not have copies. It was decided to pass for the day and get a copy of the amentments for every member, since they are quite lengthy.

SENATE BILL NO. 404: Representative Lory moed "be concurred in". The motion carried with the vote unanimous. Representative Anderson will carry on the floor.

SENATE BILL NO. 431: Representative Lory moved to amend page 2, line 1, by striking "no" and inserting "whenever notice is required, no". The motion carried with the vote unanimous. Representative Curtiss moved "be concurred in as amended". Representative Curtiss will carry on the floor.

SENATE BILL NO. 468: Representative Holmes moved amendment #1 as presented to the committee. The motion carried with the vote unanimous. Representative Kemmis moved amendments #2 and 3. He discussed his feeling on them and explained what they would do. The motion carried with the vote unanimous. Representative Lory moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Anderson will carry on the floor.

SJR 27: Representative Conroy moved "be concurred in". The motion carried with the vote unanimous. Representative Conroy will carry.

SENATE BILL NO. 482: Representative Uhde moved to amend page 1, line 4 by striking 1 kilogram and inserting 250 grams. There was considerable discussion pro and con whether this was the right amount for it to be changed to. The words would have to be amended on page 3, line 8 also. It was decided that this was the right amount and the motion carried with the vote unanimous. Representative Curtiss moved "be concurred in as amended". The motion carried with Representatives Kemmis and Holmes voting "no". Representative Curtiss will carry on the floor.

March 17, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 271, third reading copy, as follows:

1. Page 10, lines 22 and 23.
Strike: "in addition to any other records"

STATEMENT OF INTENT RE: SB 271

This bill delegates authority to the department of justice to adopt rules in sections 9 and 23.

Section 9(7) requires the department of justice to adopt rules to implement that section, entitled "Procedures To Ensure Accuracy Of Criminal History Records." The section provides that the department of justice is required to maintain a centralized state repository of criminal history record information; that criminal justice agencies are required to report dispositions of criminal cases to that state repository; that, where time allows, criminal justice agencies are required to check their records against the state repository's to assure their completeness before disseminating them; and that criminal justice agencies are responsible for the completeness and accuracy of their own files. The intent of the legislature in granting rulemaking authority with respect to this provision is to require the state repository to establish uniform procedures for the reporting of dispositions to it. These rules should include clear-cut directives regarding the format and nature of the information to be reported. For example, the rules could require the uses of standard forms for reporting. Or, these rules could provide for a unique tracking number to facilitate the linking of dispositions to specific arrests.

Section 23(1) allows, but does not require, the department of justice to adopt rules necessary to carry out the purposes of the act. With the exception of section 9, discussed above, the legislature intends that this act be self-implementing. This grant of discretionary rulemaking authority is limited, therefore, to the adoption of: (1) rules establishing procedures and forms necessary for the efficient operation of a state repository of criminal history record information, (2) interpretive rules necessary to avoid constructions that would defeat the purposes of the act, listed in section 2, or (3) model procedural guidelines which other criminal justice agencies may or may not adopt for their own use.

First adopted by SENATE JUDICIARY COMMITTEE on February 19, 1979.

SB 271

SENATE BILL NO. 271

INTRODUCED BY HAZELBAKER, TOWE

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE COLLECTION, STORAGE, AND DISSEMINATION OF CRIMINAL JUSTICE INFORMATION; TO PROVIDE FOR PRIVACY OF THE INFORMATION IN CERTAIN CIRCUMSTANCES AND PROCEDURES FOR REQUESTING CERTAIN INFORMATION; TO REQUIRE PHOTOGRAPHING AND FINGERPRINTING OF PERSONS UNDER CERTAIN CIRCUMSTANCES; AND TO REPEAL SECTIONS 44-2-103, 44-2-203, AND 44-2-204, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [This act] may be cited as the "Montana Criminal Justice Information Act of 1979".

Section 2. Purpose. The purpose of [this act] is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in criminal justice information recordkeeping.

Section 3. Definitions. As used in [this act], the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) [A] "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained

REFERENCE BILL

for purposes other than the administration of criminal justice.

(B) CRIMINAL HISTORY RECORD INFORMATION DOES NOT INCLUDE:

(I) RECORDS OF TRAFFIC OFFENSES MAINTAINED BY THE DIVISION OF MOTOR VEHICLES, DEPARTMENT OF JUSTICE; OR

(II) COURT RECORDS.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or

crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any state or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (A) "Disposition" means information disclosing

that criminal proceedings against an individual ~~to determine guilt or innocence~~ have terminated and describing the nature of the termination~~. It includes information disclosing that a charge or charges have been dismissed, that a law enforcement agency or a prosecutor has elected not to charge, or that proceedings have been indefinitely postponed and the reason for the postponement~~ OR INFORMATION RELATING TO SENTENCING, CORRECTIONAL SUPERVISION, RELEASE FROM CORRECTIONAL SUPERVISION, THE OUTCOME OF APPELLATE OR COLLATERAL REVIEW OF CRIMINAL PROCEEDINGS, OR EXECUTIVE CLEMENCY. CRIMINAL PROCEEDINGS HAVE TERMINATED IF A DECISION HAS BEEN MADE NOT TO BRING CHARGES OR CRIMINAL PROCEEDINGS HAVE BEEN CONCLUDED, ABANDONED, OR INDEFINITELY POSTPONED.

(B) Particular dispositions include but are not limited to:

~~(a)~~(I) conviction at trial or on a plea of guilty;

~~(b)~~(II) acquittal;

~~(c)~~(III) acquittal by reason of mental disease or defect;

~~(d)~~(IV) acquittal by reason of mental incompetence;

~~(e)~~(V) the sentence imposed, including all conditions attached thereto by the sentencing judge;

~~(f)~~(VI) deferred imposition of sentence with any conditions of deferral;

~~(g)~~(VII) nolle prosequi;

~~(h)~~(VIII) nolo contendere plea;

~~(i)~~(IX) deferred prosecution or diversion;

~~(j)~~(X) bond forfeiture;

~~(k)~~(XI) death;

~~(l)~~(XII) release as a result of a successful collateral attack;

~~(m)~~(XIII) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

~~(n)~~(XIV) a finding of civil incompetence or mental illness;

~~(o)~~(XV) exercise of executive clemency;

~~(p)~~(XVI) correctional placement on probation or parole or release; or

~~(q)~~(XVII) revocation of probation or parole.

(C) A SINGLE ARREST OF AN INDIVIDUAL MAY RESULT IN MORE THAN ONE DISPOSITION.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information, except confidential criminal justice information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

Section 4. Relationship to other statutes. Laws

requiring disclosure of public records, writings, or information are not superseded by [this act] unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by [this act], which applies only when information may be disclosed consistent with such laws.

Section 5. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

Section 6. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection

(1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for A traffic, regulatory, or fish and game ~~offenses~~ OFFENSE may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository

shall at once inform the ~~official having custody of the person arrested. The criminal history record, if any, may be sent to the originating agency.~~ ORIGINATING AGENCY. IF IT IS DETERMINED THAT THE INDIVIDUAL HAS A CRIMINAL RECORD, THE STATE REPOSITORY SHALL SEND THE ORIGINATING AGENCY A COPY OF THE INDIVIDUAL'S COMPLETE CRIMINAL HISTORY RECORD.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken:

(a) if a court so orders; or

(b) upon the request of the individual:

(i) if no charges were filed;

(ii) if a misdemeanor charge did not result in a conviction; or

(iii) if the individual was found innocent of the offense charged.

Section 7. Records -- form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters shall MAY maintain a chronological or numerical record of these items ~~in addition to any other records~~. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

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Section 8. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

Section 9. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

~~(2)--a-court-having-jurisdiction--in--a--criminal--case shall---advise---the--appropriate--criminal--justice--agency authorized-in-[section-6]-and-the-state--repository--of--the results-of-each-formal-proceeding-in-a-criminal-action-prior to--and--including--adjudication-within-15-days-of-any-final disposition-of-the-case~~

(2) DISPOSITIONS RESULTING FROM FORMAL PROCEEDINGS IN A COURT HAVING JURISDICTION IN A CRIMINAL ACTION AGAINST AN INDIVIDUAL WHO HAS BEEN PHOTOGRAPHED AND FINGERPRINTED UNDER [SECTION 6] SHALL BE REPORTED TO THE ORIGINATING AGENCY AND THE STATE REPOSITORY WITHIN 15 DAYS. IF THE DISPOSITIONS CAN READILY BE COLLECTED AND REPORTED THROUGH THE COURT SYSTEM, THE DISPOSITIONS MAY BE SUBMITTED TO THE STATE REPOSITORY BY THE ADMINISTRATIVE OFFICE OF THE COURTS;

~~(3) criminal---justice---agencies---authorized---under [section--6]~~ AN ORIGINATING AGENCY shall advise the state repository WITHIN 30 DAYS of all ~~arrests,--proceedings,--and~~ dispositions ~~prior-to-and-including-results-of-adjudication within-30-days-after--final--disposition--of--each--criminal case~~ CONCERNING THE TERMINATION OF CRIMINAL PROCEEDINGS AGAINST AN INDIVIDUAL WHO HAS BEEN PHOTOGRAPHED AND FINGERPRINTED UNDER [SECTION 6];

(4) the department of institutions shall advise the state repository WITHIN 30 DAYS of all ~~changes--in--custodial status~~ DISPOSITIONS subsequent to conviction ~~within-30-days of-such-changes~~ OF AN INDIVIDUAL WHO HAS BEEN PHOTOGRAPHED AND FINGERPRINTED UNDER [SECTION 6];

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall promulgate ADOPT rules FOR CRIMINAL JUSTICE AGENCIES OTHER THAN THOSE THAT ARE PART OF THE JUDICIAL BRANCH OF GOVERNMENT to implement this section. THE DEPARTMENT OF JUSTICE MAY ADOPT RULES FOR THE SAME PURPOSE FOR THE JUDICIAL BRANCH OF GOVERNMENT IF THE SUPREME COURT CONSENTS TO THE RULES.

Section 10. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is required AUTHORIZED to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

Section 11. Dissemination of criminal history record information THAT IS NOT PUBLIC CRIMINAL JUSTICE INFORMATION. Criminal history record information may not be disseminated to agencies other than criminal justice agencies except UNLESS:

(1) THE INFORMATION IS DISSEMINATED with the consent or at the request of the individual about whom it relates according to procedures specified in [sections 19 and 20] or ~~if considered necessary by a district court~~;

(2) A DISTRICT COURT CONSIDERS DISSEMINATION NECESSARY;

(3) THE INFORMATION IS DISSEMINATED IN COMPLIANCE WITH [SECTION 13]; OR

(4) THE AGENCY RECEIVING THE INFORMATION IS AUTHORIZED BY LAW TO RECEIVE IT.

Section 12. Dissemination of confidential criminal justice information. Dissemination of confidential criminal

justice information is restricted to criminal justice agencies or to those authorized by law to receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

Section 13. Development of statistical information -- agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and

approval by the department of justice to ensure compliance with [this act].

Section 14. Criminal justice information system security. Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

Section 15. Automated equipment security. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

Section 16. Computer programming security. Procedures

for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data ~~input~~ INPUT forms; and

(8) creation of reports to provide for an audit trail

and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

Section 17. Manual equipment security. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

Section 18. Personnel security. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

Section 19. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect or transfer-to-any-other-person any criminal history record information maintained about the individual OR TRANSFER

COPIES OF THAT INFORMATION TO ANY OTHER PERSON upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of COPIES OF criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with [this act].

(3) (a) An individual may request inspection or transfer OF COPIES, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy

must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

Section 20. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the

record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

Section 21. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

Section 22. Sanctions. The sanctions provided in 44-2-205, apply to any knowing or purposeful violation of

[this act].

Section 23. Department of justice -- powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of [this act];

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) ~~inspect--all--criminal-justice-information-files,~~ records, ~~--and--systems--of--all--criminal--justice--agencies~~ CONDUCT AUDITS OF THE CRIMINAL HISTORY RECORD INFORMATION SYSTEMS OF A REPRESENTATIVE SAMPLE OF STATE AND LOCAL CRIMINAL JUSTICE AGENCIES CHOSEN ANNUALLY ON A RANDOM BASIS to determine whether they are in compliance with the provisions of [this act]. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

Section 24. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of [this act].

Section 25. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 26. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Repealer. Sections 44-2-103, 44-2-203, and 44-2-204, MCA, are repealed.

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